

EXHIBIT

#9

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
CASE NO. 07-15195(MS)
CHAPTER 11

COPY

ORIGINAL

In re BAYONNE MEDICAL CENTER, :

Debtor, :

ALLEN D. WILEN, :

Plaintiff, :

-VS- :

BAYONNE/OMNI DEVELOPMENT, :

LLC, et al., :

Defendants. :

DEPOSITION OF:

HERMAN BROCKMAN

B E F O R E:

SHARON B. STOPPIELLO, a Certified Court
Reporter and Notary Public of the State of New
Jersey, at the offices of EDWARDS, ANGELL, PALMER &
DODGE, L.L.P., One Giralda Farms, Madison, New
Jersey, on MONDAY, MARCH 29, 2010, commencing at
12:28 p.m., pursuant to Notice.

DepoLink
Court Reporting & Litigation Support Services
Phone (973) 353-9880 Fax (973) 353-9445
www.depolinklegal.com

1 A Yes.

2 Q I'm continuing now from Page 61, Line

3 22:

4 "QUESTION: Did you ever see an
5 original of the pledge?

6 "ANSWER: No.

7 "QUESTION: What did you mean by the
8 first time you saw a copy of it? Had you
9 heard about the pledge, is that what you're
10 saying?

11 "ANSWER: Yes.

12 "QUESTION: So you had heard about
13 the pledge --

14 "ANSWER: Mr. Evans told me that he
15 had gotten a \$5,000,000 pledge.

16 "QUESTION: So Mr. Evans told you
17 that?

18 "ANSWER: Yes."

19 So my next question to you would be: Is
20 that statement also accurate, that you had heard
21 about the pledge before February of '09, when you
22 saw it attached to the subpoena, and that you had
23 heard about it through Mr. Evans?

24 A Yes.

25 Q What more can you tell me about what

1 Mr. Evans told you when he told you that he had
2 gotten the \$5,000,000 pledge?

3 A Nothing. The only thing he told me, he got
4 a \$5,000,000 pledge. I asked him from who. I
5 believe he said Omni.

6 Q And relative to the dates on those
7 two exhibits, one is October 14, '05 and the other
8 is October 21, '05.

9 A These both say 14. Is there another one
10 here? Okay.

11 Q Relative to those dates, can you tell
12 me how much after those dates it was that Mr. Evans
13 told you that he had gotten a pledge?

14 MR. PIZZI: Object to the form.

15 A I don't know exactly when he told me.

16 Q Was there anyone else with you when
17 Mr. Evans told you that he had received the pledge?

18 A I don't know.

19 Q Did you discuss the pledge further
20 with Mr. Evans at any time after that first
21 disclosure of his that he had received the pledge?

22 A No.

23 Q Did you discuss the pledge at any
24 time with Carrie Evans?

25 A No.

EXHIBIT

#10

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
CASE NO. 07-15195 (MS)
CHAPTER 11

-----X
In re: Bayonne Medical Center,

Debtor.
-----X

DEPOSITION OF JAMES J. HANNAN
TUESDAY, APRIL 14, 2009

DEPOLINK

Court Reporting & Litigation Support Services

Phone (973) 353-9880 Fax (973) 353-9445

www.depolinklegal.com

1 to the people at Omni Asset in an effort to
2 confirm the substance and any conditions on the
3 pledge.

4 Q. Would you agree with me that there was
5 no copy of the pledge located in the Withum
6 papers?

7 A. Yes, pledge agreement.

8 Q. Pledge agreement.

9 A. Yes.

10 (Confirmation Bates-stamped WSB891 and
11 WSB892 is marked as WSB Exhibit 14 for
12 Identification.)

13 Q. I've handed you a two-page document
14 bearing the Bates-stamp numbers WSB891 and -892.
15 Take a second to look at that, and let me know
16 when you're done.

17 Are you done?

18 A. Yes.

19 Q. Have you seen this document before?

20 A. Yes.

21 Q. Is this the confirmation that was sent
22 out in connection with the Omni 5 million-dollar
23 pledge?

24 A. Sent out under our control and received
25 in our office.

EXHIBIT

#10A



29th Street at Avenue E
Bayonne, New Jersey 07002



October 21, 2005

Mr. Avery Eisenreich
OMNI Asset Management, LLC
26 Journal Square
Jersey City, New Jersey 07306

Dear Mr. Eisenreich:

While Bayonne Medical Center regards a pledge as a promise, it is not legally binding. Bayonne Medical Center is dependent on the generosity and ability of its constituents to financially assist the Medical Center in bringing forth projects and programs; however, you are under no obligation to fulfill your pledge if your own personal financial circumstances change. While we hope that you will not experience any financial difficulties Bayonne Medical Center will work with you to accommodate unforeseen personal situations.

Thank you,

A handwritten signature in cursive script that reads "Robert H. Evans".
Robert H. Evans
President & CEO



CONFIDENTIAL PLEDGE FORM

I/We pledge an unrestricted gift to support the programs and services at Bayonne Medical Center.

The total pledge of \$ 5000.000 will be paid over five years.

The pledge will be paid in (annual, semi-annual, quarterly or monthly) quarterly / installments.

The first payment will be made on June 2006 (month/year)

☒ I/We wish to remain anonymous.

☐ I/We are interested in a naming opportunity and request the following: _____

This gift is in memory/honor of _____

Name: Oma Asset Management

Address: 26 Journal Sq. 16th Floor Phone: 201-216-9500

Signature: _____ Date: 10/24/05

EXHIBIT

#11

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
CASE NO. 07-15195 (MS)
CHAPTER 11

In re BAYONNE MEDICAL CENTER, :

Debtor, :

BAYONNE MEDICAL CENTER, :

Debtor and

Debtor-in-Possession; and :

ALLEN D. WILEN, in his

capacity as Liquidating :

Trustee and Estate

Representative for the Estate : CONNIE M. TAUBER

of Debtor, Bayonne Medical

Center, :

Plaintiff, :

-vs- :

BAYONNE/OMNI DEVELOPMENT, :

L.L.C., a New Jersey limited

liability company; et al., :

Defendants. :

B E F O R E:

SHARON B. STOPPIELLO, a Certified Court
Reporter and Notary Public of the State of New
Jersey, at the offices of GRUEN & GOLDSTEIN, ESQS.,
1150 West Chestnut Street, Union, New Jersey, on
THURSDAY, JULY 22, 2010, commencing at 10:54 a.m.,
pursuant to Notice.

DepoLink
Court Reporting & Litigation Support Services
Phone (973) 353-9880 Fax (973) 353-9445
www.depoinklegal.com

COPY

Page 10

1 Q. Sure. Who was your employer in 1999
2 when you started with the entities or Mr.
3 Eisenreich?
4 A. Avery Eisenreich.
5 Q. So he paid your paycheck?
6 A. Correct.
7 Q. Did it come out of a personal
8 checking account of some kind that he personally
9 controlled?
10 A. No.
11 Q. How did you get paid by Mr.
12 Eisenreich?
13 A. He's the signer on the check.
14 Q. Do you know what entity was the owner
15 of the bank account that you got paychecks from?
16 A. I don't recall then.
17 Q. What was your title?
18 A. I didn't have a title at that time.
19 Q. Did you ever have a title?
20 A. I sometimes use a title, but I was
21 hired to do a variety of different job
22 responsibilities that would develop as my employment
23 continued.
24 Q. Did you say you sometimes use a job
25 title?

Page 11

1 A. Yes, sometimes.
2 Q. What is the title that you use?
3 A. Director of finance.
4 Q. When did you start using that?
5 A. The beginning of 2000 something.
6 Q. In the 2000s, in other words?
7 A. Right.
8 Q. Today are your job duties the same as
9 they were when you assumed that title of director of
10 finance?
11 A. Yes.
12 Q. So tell us what your job duties are.
13 A. As director of finance, I overlook
14 the accounting department of some of Avery's
15 companies that he owns, not nursing homes.
16 Q. What else do you do? Is that it?
17 A. No.
18 Q. I want a complete answer. When we
19 ask a question to you and you stop talking, I'm
20 going to assume that you completed your answer, but
21 perhaps the answer isn't complete. You have to say
22 everything that's responsive to the question.
23 So as I understand it, your duties include
24 overlooking the accounting department of some of
25 Avery Eisenreich's companies, not nursing homes.

Page 12

1 A. Correct.
2 Q. What else are your job duties today?
3 A. I am Avery's assistant, basically,
4 when he comes in at 4:00, 5:00 in the afternoon.
5 Q. He comes in at 4:00 or 5:00, that's
6 when he comes in most days?
7 A. Almost every day.
8 Q. What does he do when he gets up in
9 the morning and 4:00?
10 A. He has his own schedule.
11 Q. Are you familiar with his schedule?
12 A. Only sometimes.
13 Q. How late does he work?
14 A. It could be 8:00, 9:00.
15 Q. How late -- what are your hours?
16 A. 9:00, on the average.
17 Q. 9:00 p.m.?
18 A. Yes.
19 Q. What time do you start work?
20 A. Between 9:00 and 9:30.
21 Q. What are the companies that you
22 oversee the accounting work for?
23 A. A therapy company, a home care
24 company, a respiratory company, a pharmacy we own,
25 or he owns, I don't own anything, a medical company

Page 13

1 that he owned, that I still manage, properties that
2 he owns. I can't remember anything else right now.
3 Q. What are the names of these entities?
4 A. The therapy company, Advantage Rehab,
5 Advantage Rehabilitation Services, Advantage
6 Respiratory, Promise Care of New Jersey, the medical
7 company was partners, Med B.
8 Q. Med?
9 A. Med B, L.L.C.
10 Q. Med B-e-e?
11 A. No, B. Partners Med B. Letter B,
12 L.L.C.
13 Q. Did you say Med Partners?
14 A. Partners Med, M-e-d, capital B,
15 L.L.C. And the realities then, very many. Do you
16 want me to list them all?
17 Q. Yes.
18 A. I'll be honest, I can't remember them
19 all.
20 Q. Okay. Just tell us the ones you
21 recall.
22 A. Rochelle Park Holding.
23 Q. Rochelle Park, okay.
24 A. Castle Hill Holding, S.A.C. Realty,
25 Great Falls Realty, the list is long. A lot of

EXHIBIT

#12

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
CASE NO. 07-15195 (MS)
CHAPTER 11

In re BAYONNE MEDICAL CENTER, :

Debtor, :

ORIGINAL

BAYONNE MEDICAL CENTER, :

Debtor and :

Debtor-in-Possession; and :

ALLEN D. WILEN, in his :

capacity as Liquidating :

Trustee and Estate :

Representative for the Estate :

of Debtor, Bayonne Medical :

Center, :

DEPOSITION OF:

ROBERT H. EVANS :

VOLUME I

(Pages 1-236)

Plaintiff, :

-vs- :

BAYONNE/OMNI DEVELOPMENT, :

L.L.C., a New Jersey limited :

liability company; et al., :

Defendants. :

B E F O R E:

SHARON B. STOPPIELLO, a Certified Court
Reporter and Notary Public of the State of New
Jersey, at the offices of GREENBAUM, ROWE, SMITH &
DAVIS, L.L.P., 75 Livingston Avenue, Roseland, New
Jersey, on MONDAY, JUNE 21, 2010, commencing at 9:19
a.m., pursuant to Notice.

DepoLink

Court Reporting & Litigation Support Services

Phone (973) 353-9880 Fax (973) 353-9445

www.depoinklegal.com

1 MR. FALANGA: Object to form.

2 Q. Did you ever bring the comfort letter
3 to Withum's attention?

4 MR. FALANGA: Object to the form.

5 A. I did not, no.

6 Q. Do you know whether Carrie or Marvin
7 or Paul Mohrle did?

8 MR. FALANGA: Object to the form.

9 A. I wouldn't know.

10 Q. Do you know if anyone on behalf of
11 BMC brought this comfort letter to WSB's attention?

12 MR. FALANGA: Object to the form.

13 A. I don't know.

14 Q. At some point in time did you sign a
15 management representation letter in connection with
16 WSB's audit of BMC's finances for 2005 in which you
17 told them, in words or substance, that the Omni
18 pledge was enforceable?

19 MR. FALANGA: Object to the form.

20 MS. KIERKUT: Object to the form.

21 A. Management rep letters are something
22 that are fairly routine in our industry. Generally
23 they're prepared either by the auditors, in this
24 case it would have been prepared by
25 WithumSmith+Brown, and in conjunction with our

1 finance department, in particular our CFO. The CFO
2 essentially puts the rep letter in front of a person
3 such as myself, the CFO, and says it's okay to sign
4 and then I sign it. This particular rep letter
5 probably had at least two signatures besides mine.
6 It probably had Mr. Mohrle's who was the director of
7 finance at the time, it probably had Heather
8 Aaron's. I would not state now or then that my
9 signature spoke to the enforceability of the pledge.

10 Q. Other than you, so far as you know,
11 who before December 2005, if anyone, was aware of
12 the existence of the comfort letter, Tab 21?

13 MR. FALANGA: Objection.

14 A. I couldn't say, Mr. Gruen, but it was
15 not a secret. I discussed it with several senior
16 management people.

17 Q. Who?

18 A. With Mr. Apsel, with Heather Aaron at
19 the time, with Marv, Carrie Evans. Also Vinny
20 Lombardo when I asked his advice. And the fact that
21 it's here, you know, it was probably pulled out of
22 the files of Bayonne Medical Center. As I said, it
23 is what it is.

24 Q. I don't mean to be critical, but I'm
25 not entirely sure you answered the question I put,

1 with any of those persons before the management rep
2 letter about whether you should or shouldn't
3 communicate to Withum that it was BMC policy, as
4 you've described it here today, not to seek
5 enforcement of pledges?

6 MR. FALANGA: Object to the form.

7 MS. KIERKUT: Objection to norm.

8 A. As I said before, I never thought
9 that it was something that had to be related.
10 Again, I didn't think it was a change in anything
11 regarding our policy, or certainly something that
12 would be communicated to an auditor, it never
13 crossed my mind.

14 Q. The auditors before Withum were J. H.
15 Cohn?

16 A. Correct.

17 Q. And did J. H. Cohn do the audits for
18 the entire period of your tenure other than for the
19 year 2005?

20 A. I believe they did 2004 and 2003.
21 I'm not certain.

22 Q. So far as you know, did anyone ever
23 communicate to J. H. Cohn before they did their
24 audits the BMC policy with respect to
25 unenforceability of pledges as you've testified to

EXHIBIT

#13

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
CASE NO. 07-15195 (MS)
CHAPTER 11

In re BAYONNE MEDICAL CENTER, :

Debtor, :

ORIGINAL

BAYONNE MEDICAL CENTER, :

Debtor and :

Debtor-in-Possession; and :

ALLEN D. WILEN, in his :

capacity as Liquidating :

Trustee and Estate :

Representative for the Estate :

of Debtor, Bayonne Medical :

Center, :

DEPOSITION OF:

ROBERT H. EVANS

VOLUME I

(Pages 1-236)

Plaintiff, :

-vs- :

BAYONNE/OMNI DEVELOPMENT, :

L.L.C., a New Jersey limited :

liability company; et al., :

Defendants. :

B E F O R E:

SHARON B. STOPPIELLO, a Certified Court
Reporter and Notary Public of the State of New
Jersey, at the offices of GREENBAUM, ROWE, SMITH &
DAVIS, L.L.P., 75 Livingston Avenue, Roseland, New
Jersey, on MONDAY, JUNE 21, 2010, commencing at 9:19
a.m., pursuant to Notice.

DepoLink

Court Reporting & Litigation Support Services

Phone (973) 353-9880 Fax (973) 353-9445

www.depoinklegal.com

1 you talked with anyone about when the pledge would
2 be paid?

3 A. When did I talk to anybody?

4 Q. The first time you can recall.

5 A. Probably around December of 2005,
6 January of 2006.

7 Q. Well, do you recall whether it was
8 before you signed the letter of intent or after you
9 signed the letter of intent?

10 A. I don't recall.

11 Q. Did you ever threaten Mr. Eisenreich
12 that you wouldn't sign the letter of intent unless
13 he delivered the pledge?

14 MS. KIERKUT: Object to the form.

15 A. I did not.

16 Q. To your recollection, was there any
17 duress involved? Do you know what had I mean by
18 "duress"?

19 A. I do.

20 Q. Was there any duress involved with
21 the hospital obtaining the pledge from Mr.
22 Eisenreich or Omni Asset Management?

23 A. I don't believe there was any duress,
24 no.

25 Q. So it's your understanding that it

1 was a voluntary pledge, correct?

2 A. Correct.

3 Q. Did you ever hear from anybody that
4 Mr. Eisenreich was claiming that the pledge was
5 obtained by duress?

6 A. Only in the context of this
7 litigation.

8 Q. Do you recall when you heard that,
9 other than if it was through counsel?

10 A. It was through counsel.

11 MS. KIERKUT: We're not waiving any
12 privilege by that statement.

13 MR. FALANGA: I understand that,
14 that's why I clarified it, I didn't want him to say
15 it.

16 Q. Was the pledge in any way contingent
17 upon you agreeing to sign a letter of intent?

18 A. No.

19 Q. So as far as you were concerned, the
20 hospital would have signed the letter of intent
21 regardless of whether it obtained the pledge from
22 Mr. Eisenreich or Omni Asset Management?

23 A. Absolutely. Our biggest goal was to
24 get the nursing home built and to move forward with
25 the deal with Omni.

EXHIBIT

#14

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
CASE NO. 07-15195(MS)
CHAPTER 11

COPY

ORIGINAL

In re BAYONNE MEDICAL CENTER, :

Debtor, :

ALLEN D. WILEN, :

Plaintiff, :

DEPOSITION OF:

HERMAN BROCKMAN

-vs- :

BAYONNE/OMNI DEVELOPMENT, :
LLC, et al., :

Defendants.

B E F O R E:

SHARON B. STOPPIELLO, a Certified Court
Reporter and Notary Public of the State of New
Jersey, at the offices of EDWARDS, ANGELL, PALMER &
DODGE, L.L.P., One Giralda Farms, Madison, New
Jersey, on MONDAY, MARCH 29, 2010, commencing at
12:28 p.m., pursuant to Notice.

DepoLink
Court Reporting & Litigation Support Services
Phone (973) 353-9880 Fax (973) 353-9445
www.depolinklegal.com

1 they chose to go through with?

2 A Yes, Mr. Evans brought to the board that
3 that was the company they were going for.

4 Q Do you know recall that he said why
5 it was that that was the company they were going
6 with?

7 A I believe he said something like they
8 already had the licensed beds.

9 Q Did you understand what that meant?

10 A That meant you didn't have to apply to the
11 state for the process of getting licensed beds,
12 which could take a substantial amount of time.
13 That's the way it was explained.

14 Q And did Evans explain that the
15 candidates that were being considered for
16 development of the skilled nursing facility, that
17 Eisenreich or his company was the only one who held
18 such a license?

19 A I believe that's what he said.

20 Q At some point in time somebody then
21 began negotiations with Mr. Eisenreich with a view
22 towards implementing this idea.

23 MR. PIZZI: Objection, no foundation.

24 Q Is that correct?

25 A I believe so.

1 Q Who was it that began negotiations
2 with Mr. Eisenreich in furtherance of this idea?

3 A From what I read, I believe it was Mr.
4 Evans.

5 Q When you say from what you read, what
6 is it that you're referring to?

7 A Some of the material I've read here that
8 says Mr. Evans in 2005 said this, et cetera, et
9 cetera. And he was the one who reported to the
10 board about it, so I believe it was Mr. Evans.

11 Q Did Mr. Evans make periodic reports
12 to the board of the progress that he was having in
13 negotiating a deal with Mr. Eisenreich to implement
14 his idea?

15 A No. He just reported that they were moving
16 forward on the nursing home project.

17 Q Did he or did anyone else ever report
18 to the board that letters of intent had been
19 exchanged with Mr. Eisenreich with respect to
20 furthering this idea?

21 A I don't recall.

22 Q Do you recall ever seeing letters of
23 intent relating to negotiations with Mr. Eisenreich
24 in connection with furthering this idea?

25 A No.

EXHIBIT

#15

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
CASE NO. 07-15195(MS)
CHAPTER 11

In re BAYONNE MEDICAL CENTER, :

Debtor, :

ORIGINAL

BAYONNE MEDICAL CENTER, :

Debtor and

Debtor-in-Possession; and :

ALLEN D. WILEN, in his

capacity as Liquidating : DEPOSITION OF:

Trustee and Estate

Representative for the Estate : MARVIN APSEL

of Debtor, Bayonne Medical

Center, :

Plaintiff, :

-vs- :

BAYONNE/OMNI DEVELOPMENT, :

L.L.C., a New Jersey limited

liability company; et al., :

Defendants. :

B E F O R E:

SHARON B. STOPPIELLO, a Certified Court
Reporter and Notary Public of the State of New
Jersey, at the offices of GRUEN & GOLDSTEIN, ESQS.,
1150 West Chestnut Street, Union, New Jersey, on
THURSDAY, OCTOBER 14, 2010, commencing at 10:05
a.m., pursuant to Notice.

DepoLink
Court Reporting & Litigation Support Services
Phone (973) 353-9880 Fax (973) 353-9445
www.depolinklegal.com

1 at all about that number beyond his telling you
2 that's the number that he wanted you to pursue?

3 A. No.

4 Q. He told you about talking points.

5 What talking points did he tell you?

6 A. The talking points were, as I recall,
7 that a pledge of this magnitude would be a
8 demonstration of the commitment of Avery Eisenreich
9 and Omni to the Bayonne Medical Center, to the
10 Bayonne community, and a strong commitment to the
11 project.

12 Q. Do you recall his giving you any
13 other talking points?

14 A. He asked me to ask for the amount
15 noted over a period of five years, to be paid
16 annually over a five-year period.

17 Q. Anything else?

18 A. He asked me to do it expeditiously.

19 Q. Did he tell you that Avery's
20 selection for the SNF project was going to turn on
21 whether this pledge was given?

22 A. He did not say that to me.

23 Q. Anything else you can recall about
24 that specific conversation with Rob Evans, this
25 first conversation?